

BEFORE THE  
POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF  
TRAVIS WALKER dba  
T. W. CONSTRUCTION COMPANY,

Appellant,

v.

PUGET SOUND AIR POLLUTION  
CONTROL AGENCY,

Respondent.

PCHB No. 82-49

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND ORDER

This matter, the appeal from the issuance of a \$250 civil penalty for the alleged violations of Sections 8.02(3), 8.02(4), 8.05(1) and 9.03 of Regulation I, came before the Pollution Control Hearings Board, Gayle Rothrock, Chairman (presiding), David Akana and Larry Faulk, at a formal hearing on October 13, 1982, in Lacey.

Appellant appeared pro se; respondent was represented by its attorney, Keith D. McGoffin. Court reporter Jane Johnson recorded the proceedings.

Having heard the testimony, having examined the exhibits, and

1 having considered the contentions of the parties, the Board makes these

2 FINDINGS OF FACT

3 I

4 Appellant, Travis Walker, dba T. W. Wholesale Construction, is a  
5 general contractor operating in the State of Washington since 1970.

6 II

7 On June 11, 1982, appellant was preparing a site for construction  
8 near South 45th and Washington Streets in Tacoma, Washington. As a  
9 part of the site preparation plan, appellant intended to burn  
10 unsalvagable materials from the demolition of residential structures  
11 formerly on the property. Appellant testified that he telephoned the  
12 Tacoma Fire Department (TFD) at about 9:00 a.m., and understood that  
13 he had permission to conduct a burn on residential property. A fire  
14 was started in two separate piles of materials.

15 III

16 It is TFD procedures when receiving telephone inquiries about  
17 outdoor fires, to read the regulations over the telephone:

18 Residential burning is permitted if fires are  
19 conducted by residents; fires are started between  
20 10:00 a.m. and extinguished before dark; no burning  
21 within 50 feet of any structure and only natural  
22 vegetation is allowed to be burned. Piles can only  
23 be 4' in diameter by 3' in height and only one fire  
24 at a time.

25 IV

26 At about 11:00 a.m., in response to reports of a large amount of  
27 smoke, Tacoma Fire Department Engine #17 drove by appellant's site for

1 an unscheduled inspection. Although appellant could not produce a  
2 burning permit, he claimed that he had permission to burn. The TFD  
3 officer informed appellant of the burning requirements: only natural  
4 vegetation and clean lumber in piles no larger than 4 feet by 4 feet  
5 in size. The TFD officer did not notice any tires, roofing or asphalt  
6 products being burned but told appellant that the fires were too  
7 large. The fires did not appear to be creating a safety hazard. The  
8 officer returned to the station and reported the situation to his  
9 organization.

10 V

11 At about 3:30 p.m., a fire inspector from TFD inspected  
12 appellant's site in response to complaints of heavy smoke in the  
13 area. The inspector saw natural vegetation and demolition debris  
14 containing some roofing material, in the fire.

15 VI

16 At about 3:45 p.m., respondent's inspector arrived at appellant's  
17 work site. He noticed two large piles (15 feet diameter, 8 feet high;  
18 30 feet by 20 feet by 15 feet high) of burning materials. After  
19 positioning himself, he recorded an opacity of 100 percent for 7-1/4  
20 consecutive minutes from a white/brown plume. The piles were observed  
21 to contain natural vegetation, painted lumber, and some composition  
22 roofing materials. The fire was extinguished by the TFD.

23 Appellant was contacted and issued notices of violation of  
24 Sections 8.02(3), 8.02(4), 8.05(1) and 9.03 of Regulation I. From  
25 these notices followed an assessment of \$250 for the alleged  
26 violations and an appeal to this Board.

27 FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW & ORDER  
PCHB No. 82-49

VII

Neither respondent nor TFD issued a written permit or approval for the fire in question.

VIII

Pursuant to RCW 43.21B.260, respondent has filed with this Board a certified copy of its Regulation I and amendments thereto which are noticed.

Section 8.02(3) makes it unlawful for any person to cause or allow an outdoor fire containing certain materials, including asphalt, paints and plastics.

Section 8.02(4) prohibits an outdoor fire for purpose of demolition of materials.

Section 8.05(1) makes it unlawful to conduct an outdoor fire, other than for land clearing burning or residential burning, unless written approval has been issued by respondent.

Section 9.03(b) makes it unlawful for any person to cause or allow the emission of any contaminant, including smoke, for a period of more than three minutes in any one hour, which is of an opacity greater than or equal to 20 percent.

Section 3.29 provides for a penalty of up to \$250 per day for each violation of Regulation I.

IX

Appellant has no record of violations of Regulation I.

X

Any Conclusion of Law which should be deemed a Finding of Fact is hereby adopted as such.

From these Findings the Board comes to the following

#### CONCLUSIONS OF LAW

##### I

Appellant's assertion that he had permission to burn would be a defense if the fire complied with the instructions given by the TFD. However, appellant burned two large fires rather than one small one. Those fires also contained some prohibited materials.

##### II

Appellant violated Sections 8.02(3), 8.02(4), 8.05(1) and 9.03(b) as alleged. The \$250 civil penalty assessed is reasonable in amount given the nature and character of the fire. However, a portion of the penalty should be suspended because it is appellant's first recorded incident under Regulation I.

##### III

Any Finding of Fact which should be deemed a Conclusion of Law is hereby adopted as such.

From these Conclusions the Board enters this

ORDER

The \$250 civil penalty is affirmed, provided however, that \$150 of the amount is suspended on condition that appellant not violate any provision of Regulation I for a period of two years from the entry date of this Order.

DONE at Lacey, Washington this 22nd day of October, 1982.

POLLUTION CONTROL HEARINGS BOARD

David Akana  
DAVID AKANA, Lawyer Member

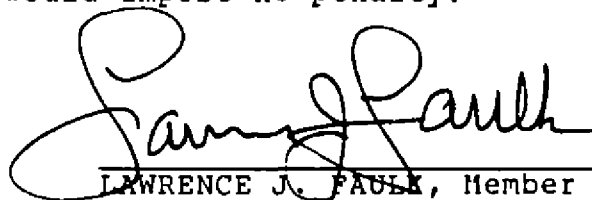
Gayle Rothrock  
GAYLE ROTHROCK, Chairman

See Dissenting Opinion  
LAWRENCE J. FAULK, Member

1 DISSENT, Lawrence J. Faulk:

2  
3 Respondent related to the Board that the appellant had violated  
4 Regulation I on four counts but was only fined \$250 for one count.  
5 Appellant related to the Board that he had received permission from  
6 the Tacoma Fire Department to commence burning; that they in fact had  
7 inspected the fire twice and approved; that this was the first time he  
8 had ever been cited for an air pollution control violation; and that  
9 he did not make a practice of breaking the environmental laws of the  
10 State of Washington.

11 Whether appellant received permission from the TFD to burn the  
12 materials in question is a critical, factual issue which I resolve in  
13 favor of the appellant. Consequently, although there may be technical  
14 violations of Regulation I, I would impose no penalty.

15  
16   
17 LAWRENCE J. FAULK, Member